IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

And
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 14021 of 2004

Between:

1 The Superintendent of Police, Warangal, Warangal District.
2 The Deputy Inspector General of Police, W/R, Warangal.
3 Addl. Director General of Police(Admn), Andhra Pradesh, Hyderabad.
4 Government of Andhra Pradesh, rep by its Secretary, Home Department, Secretariat, Hyderabad.

..... PETITIONERS

AND

G. Saibaba, Ex PC 610, S/o. Kistaiah,
Kumarpally, Hanamkonda, Warangal District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or direction more particularly one in the nature "WRIT OF CERITIORARI" calling for the records connected with order in O.A.No. 6496/2001, dt. 27-03-2003 on the file of Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and to quash the same as erroneous and contrary to law.

Counsel for the Petitioners: GP FOR SERVICES I

Counsel for the Respondent: --N.A.--

The Court, at the stage of admission, made the following:

(Oral Order: Per: The Hon'ble Mr. Justice Goda Raghuram)

Aggrieved by the judgment dated 27-03-2003 of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') in O.A.No. 6496 of 2001, the respondents therein have preferred this writ petition. The parties are described as arrayed in the O.A. The respondent herein was the applicant.

The applicant having been appointed as a Police Constable in 1981 and while working as such at Hanamkonda in 1996 was issued a charge memo dated 27-02-1996 by the Superintendent of Police, Warangal listing out three charges viz.,

a. *That while he was working at Warangal, the applicant committed gross negligence of duty for his unauthorized absence from 15-07-1993 and availing eight (8) days C.L. from 24-08-1991 to 31-08-1991 and extended leave from 01-09-1991 to 19-10-1992.*

b. *That he committed misconduct in smuggling Ganja from Duggondi while on special duty; and*

c. *That he committed the gross misconduct of claiming false T.A. for the month of July, 1993 without performing special duty.*

The Assistant Superintendent of Police, Warangal was appointed as an Inquiry Officer, who, after a due process of inquiry, submitted an inquiry report. The Superintendent of Police issued a show cause notice dated 01-02-1997 calling for the explanation of the applicant to the inquiry report and thereafter passed an order dated 06-10-1997 imposing on the applicant the penalty of removal from service. The applicant preferred an appeal to the Deputy

Inspector General of Police, Warangal Range, which was rejected by the order dated 14-07-1998. He filed a revision to the Director General of Police, which was also rejected by the proceedings dated 13-03-2000. His mercy petition to the State Government met a similar fate and was rejected by the order dated 17-08-2000. Aggrieved, he filed the O.A.

With regard to the charge of unauthorized absence, the applicant contended that the Superintendent of Police, had conducted an inquiry earlier and had regularized the period of his absence and allowed the applicant to continue on duty. He also contended that he had extended leave from time to time i.e., from 01-09-1991 to 19-10-1992. He contended, in substance, that as the period of his absence was already regularized, it could not constitute a ground of misconduct.

With regard to the second charge relating to smuggling of Ganja, he contended that the charge is false and baseless. According to the applicant, he was prosecuted on the identical charge in C.C.No. 63 of 1993 and was acquitted by the judgment dated 23-07-1997 of the learned Additional Sessions Judge, Warangal. There was no legal evidence at all in substantiation of the charge of the applicant having indulged in smuggling of Ganja, is the substance of the applicant's defence to this charge.

The applicant also alleged that the third charge of claiming false T.A. for the month of July, 1993 was a concocted charge and that the Commanders under whom he worked during that period had disowned him on account of the pendency of the criminal case. He also alleged that the charge was held to be proved in the departmental inquiry, without even a verification of who had manipulated the T.A. Bills.

Insofar as the second charge of smuggling of Ganja by the applicant is concerned, the learned Tribunal concluded that in the judgment dated 23-07-1997 in C.C.No. 63 of 1993, the applicant was acquitted. His acquittal was on account of the fact that except the

statement allegedly made by a co-accused in the presence of the Investigating Officer, there was no evidence incriminating the applicant. The finding of guilt against the applicant in respect of this charge is recorded on the basis of the evidence of the then Mandal Revenue Officer, who held a panchanama after seizure of Ganja from one Vijaya in Cr.No. 55 of 1993 of Police Station, Duggondi. Vijaya is stated to have confessed that she had purchased the Ganja from the applicant. This is the sole material on the basis of which the applicant was found guilty of the charge of indulging in smuggling of Ganja. The Tribunal rightly concluded that as there was no legal evidence in support of the charge, the findings, in the departmental proceedings in respect of this charge, are illegal.

In relation to the charge No.1 regarding the unauthorized absence of the applicant, this period was already regularized by the employer prior to the orders of dismissal. The Tribunal, therefore, rightly concluded that as the period was regularized and as the regularization of the period is not disputed, the applicant could not have been found guilty of misconduct on this count.

With regard to charge No.3 relating to submission of false T.A. claim, the Tribunal came to the conclusion that the finding of guilt in respect of this charge did not warrant interference, as the charge was rightly held proved on the basis of the documents available on record and there was no warrant for re-appraisal of the evidence.

Having concluded that the findings in the departmental proceedings in respect of the two of the three charges, which are themselves grave in nature are illegal and unsustainable, the Tribunal rightly came to the conclusion that the punishment of dismissal from service on the singular charge No.3 is grossly disproportionate. Accordingly it set aside the punishment imposed by the Superintendent of Police as well as the orders of the appellate and revisional authorities confirming the same. In conclusion, the Tribunal remanded the matter back to the petitioners herein to impose an alternative penalty, other than the termination from

service, which is proportionate to the guilt of the applicant (having regard to the finding in respect of charge No.3).

We find no error, either in the analysis of facts, application of law or exercise of discretion by the learned Tribunal in the conclusions relating to the charge Nos. 1 and 2. There was no evidence in respect of charge No.2 relating to the smuggling of Ganja. The evidence of the Mandal Revenue Officer relating to the confession of Vijaya cannot on its own strength and without any corroboration and in the absence of any independent evidence, justify a conclusion of guilt of the applicant even in a domestic inquiry. As the applicant's absence for the period had been regularized prior to the punishment of dismissal imposed on him, such absence could not have been made a ground of departmental inquiry as it no longer constituted an unauthorized absence. As the applicant was thus found guilty of only the 3rd charge viz., claiming of false T.A. bill, the punishment of dismissal imposed in respect of a finding of guilt in respect of all the three charges, could be rightly considered disproportionate, as correctly held by the Tribunal.

On the above analysis, there are no grounds to interfere with the order of the Tribunal. The writ petition is without merits and is accordingly dismissed, at the stage of admission.

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J. CHELAMESWAR, J

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GODA RAGHURAM, J

Dt. 29-09-2004

Pvks/*

To

1. The Secretary, Home Department, Government of Andhra Pradesh, Secretariat, Hyderabad.

2. The Superintendent of Police, Warangal, Warangal District.
3. The Deputy Inspector General of Police, W/R, Warangal.
4. The Addl. Director General of Police(Admn), Andhra Pradesh, Hyderabad.

5.2CCs to the Government Pleader for Services-I, A.P. High Court Buildings, Hyderabad (OUT).

6.2CD copies.

7. The Registrar, A.P. Administrative Tribunal, Hyderabad.